

7389
DECISION



B. Japke
PL2
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-190020

DATE: August 16, 1978

MATTER OF: General Electrodynamics Corporation--
Reconsideration

DIGEST:

Contractor purchasing equipment for Government failed to employ practices conforming to Federal competitive procurement norm because procurement was not publicized and reasons given for not testing protester's equipment for possible acquisition are not persuasive.

This is a reconsideration of our decision, General Electrodynamics Corporation, B-190020, January 31, 1978, 78-1 CPD 78, in which we denied the protest.

General Electrodynamics Corporation (GEC) protested the contract award under a request for quotation issued by Sandia Corporation, a firm which operates Government facilities under a prime management type contract with the Department of Energy (DOE). The Air Force asked DOE to make available Sandia's services in evaluating, selecting and purchasing an initial lot of closed circuit television cameras for surveillance use in its Boundary Alarm Assessment Program. The Air Force decided that it needed Sandia's capabilities in designing security systems and to provide site installation engineering on a high priority, short time frame basis. Accordingly, a Tasking Statement or work order was prepared under a Memorandum of Understanding between the Air Force and DOE, under 31 U.S.C. § 686(a) (1970). We decided the protest because Sandia was acting "for" the Government.

Essentially GEC argued that it was denied an equal opportunity to compete and to have its television equipment approved for acquisition. It complained that Sandia purposely avoided issuing a solicitation and that Sandia refused to disclose to some manufacturers the fact and purpose of the intended procurement. GEC objected to Sandia's acquisition of test equipment from retail dealers rather than from the manufacturer. GEC argued that the supposed GEC camera produced by Sandia for evaluation was not a true GEC model 7084, but was a hybrid combination of electronics, vidicon and lense. After completing

preliminary tests of this equipment Sandia disqualified GEC from further consideration. However, GEC argued that its model 7047 camera had been tested and approved by the Navy for a similar application, and it argued that this camera also should have been considered because it met Sandia's technical requirements.

In our prior decision we concluded that the question presented could be resolved in terms of whether DOE and Sandia treated offerors fairly, given its decision to solicit retailers rather than manufacturers whenever possible. We found no convincing evidence of a deliberate attempt to deprive GEC of the opportunity to have its equipment considered for award.

We remain of that view. However we did not consider in the prior decision whether it was proper for Sandia to restrict competition by avoiding contact with manufacturers whenever possible. Upon reconsideration we believe that we must examine the validity of this threshold question and reexamine other aspects of Sandia's procurement procedures.

In late 1975 the Air Force announced in the Commerce Business Daily that it was seeking potential sources capable of fulfilling stated requirements for an "off-the-shelf" television camera. Mitre Corporation analyzed the responses to the announcement and produced a report of its findings for the Air Force. Mitre's analysis shows that six cameras, including the protester's model ED7047-105, met the technical requirements. The report noted that except for GEC's equipment all cameras were priced at under \$2,000. Sandia was furnished a draft copy of this portion of the Mitre report, and states that it was told by the Air Force that six cameras were recommended by Mitre. However, the model numbers identified by the Air Force differed in three instances from those indicated in the Mitre report.

GEC's model ED7047-105 was not selected for evaluation testing by Sandia because it was not among those recommended by the Air Force; it was considered too expensive in comparison with other cameras; and, as then manufactured, it did not satisfy two program

requirements. Although the Air Force did not recommend this model to Sandia, the Mitre study concluded that it appeared to be technically acceptable based on a review of GEC's supporting literature. The two program requirements which this camera did not meet--environmental housing and capability to operate in both the United States and Europe--could be satisfied by modifying the equipment. Our prior decision noted that before July 1, 1976 the Federal Supply Schedule (FSS) price for this GEC camera, with lense, was \$3,326.90, approximately \$200 more than the FSS price for a Cohu camera which was included for evaluation testing. Cohu, however, reduced its FSS price by \$382 as of July 1, 1976 which brought it below the \$3,000 limit established by Sandia.

Normally, Government agencies are required to promote full and free competition by giving notice of their intention to procure. See Armed Services Procurement Regulation § 1-1001 et seq. (1976 ed.) and Federal Procurement Regulations § 1-1.1001 et seq. Even where an agency must restrict a procurement to prequalified products, or to brand name or off-the-shelf equipment, it is incumbent upon the Government to publicize this fact and to provide a fair opportunity to interested firms to participate where circumstances permit. For example, we have sustained a protest in which potential bidders were denied an opportunity to compete because of the failure to timely synopsise the procurement in the Commerce Business Daily, even though the Government had determined that only one manufacturer could produce the item. D. Moody & Co., 56 Comp. Gen. 1005 (1977), 77-2 CPD 233.

A prime management contractor such as Sandia may vary from the procedures and practices governing direct Government procurement, but is held to basic Federal procurement principles of competition. Fiber Materials, Inc., B-191318, June 8, 1978, 78-1 CPD 422. ERDA (now DOE) procurement regulations establish the policy that contractor procurements be effected by methods calculated to assure full and free competition. 41 C.F.R. § 9-50.302-3 (1977 ed.). Moreover, this regulation contemplates

that procurement actions will be carried out through publicizing and soliciting competitive offers or through negotiation, in which case the solicitation and evaluation of proposals should be obtained from an adequate number of qualified sources.

In our opinion, Sandia improperly attempted to prequalify cameras without alerting the industry of its intentions. Its failure to publicize its procurement objectives, while perhaps well intended, ran afoul of basic Government procurement policy by failing to promote full and free competition. Thus it denied GEC, and perhaps others, a meaningful opportunity to qualify equipment, a failure which ultimately deprived the Government of an evaluation of the particular camera GEC believes would best satisfy the Government's needs.

In addition, Sandia's reasons for not testing GEC's 7047 camera are not persuasive. The failure to publicize gives the appearance of preferential treatment. Even though Sandia excluded the GEC model 7047 on the basis of its price, GEC believes it can be price competitive given the quantities involved. We have held it would be improper to speculate as to potential bidders' willingness to offer competitive prices and that willingness may only be tested by competition. Olivetti Corporation of America, B-187369, February 28, 1977, 77-1 CPD 146. Moreover, GSA has advised us that GEC's model ED7047-105 is not currently listed on the Federal Supply Schedule but that it was listed at \$2,794.80 for the year ending June 30, 1978, which was below the \$3,000 limit established by Sandia.

We understand that Sandia is presently selecting and evaluating several new cameras which have become available in order to determine whether or not follow-on purchases should be on a competitive basis with a full range of competition. In view of our conclusions we recommend that any need for additional units be publicized to the industry and interested firms be permitted to qualify for the competition. At a minimum we recommend that GEC's current equipment be tested for compliance with the Government's requirements. If it is determined that GEC's equipment meets the requirements of the Air Force, GEC should be considered for the follow-on purchases.

This decision contains a recommendation for corrective action to be taken. Therefore, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations and the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. 1176 (1970), which requires the submission of written statements by the agency to the Committees concerning the action taken with respect to our recommendation.


Deputy Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B. J. J. J.
P. U.

B-190020

August 16, 1978

The Honorable Warren G. Magnuson
Chairman, Committee on Appropriations
United States Senate

Dear Mr. Chairman:

Enclosed is a copy of our decision in General ElectroDynamics Corporation, B-190020, of today in which we recommend corrective action be taken to determine if equipment offered by the General ElectroDynamics Corporation meets the Air Force's requirements for use in its Boundary Alarm Assessment Program. This procurement was conducted by the Department of Energy (DOE) for the Air Force under the Economy Act, 31 U.S.C. § 686(a) (1970).

The DOE has been advised of its obligations under section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1970).

Sincerely yours,

Deputy

V. J. K. K.
Comptroller General
of the United States

Enclosure



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B. J. J. J.
PL 2

B-190020

August 16, 1978

The Honorable John C. Stetson
The Secretary of the Air Force

Dear Mr. Secretary:

Enclosed is a copy of our decision of today in the protest filed by the General Electrodynamics Corporation, B-190020, regarding a procurement by Sandia Corporation under contract with the Department of Energy (DOE). This matter is being brought to your attention in view of our recommendation to the Secretary of Energy that corrective action be taken and because the subject matter of the procurement, closed circuit surveillance television cameras, are being purchased by DOE for the Air Force under the Economy Act, 31 U.S.C. § 686(a) (1970).

Sincerely yours,

[Signature]
Deputy Comptroller General
of the United States

Enclosure



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B. Joseph
Pl 2

B-190020

August 16, 1978

The Honorable Abraham Ribicoff
Chairman, Committee on Governmental
Affairs
United States Senate

Dear Mr. Chairman:

Enclosed is a copy of our decision in General Electrodynamics Corporation, B-190020, of today in which we recommend corrective action be taken to determine if equipment offered by the General Electrodynamics Corporation meets the Air Force's requirements for use in its Boundary Alarm Assessment Program. This procurement was conducted by the Department of Energy (DOE) for the Air Force under the Economy Act, 31 U.S.C. § 686(a) (1970).

The DOE has been advised of its obligations under section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. §1176 (1970).

Sincerely yours,

P. W. Kistner
Deputy Comptroller General
of the United States

Enclosure



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B. J. J. J.
P.L.S.

B-190020

August 16, 1978

The Honorable George H. Mahon
Chairman, Committee on
Appropriations
House of Representatives

Dear Mr. Chairman:

Enclosed is a copy of our decision in General Electrodynamics Corporation, B-190020, of today in which we recommend corrective action be taken to determine if equipment offered by the General Electrodynamics Corporation meets the Air Force's requirements for use in its Boundary Alarm Assessment Program. This procurement was conducted by the Department of Energy (DOE) for the Air Force under the Economy Act, 31 U.S.C. § 686(a) (1970).

The DOE has been advised of its obligations under section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1970).

Sincerely yours,

R. K. Miller
Deputy Comptroller General
of the United States

Enclosure



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

D. Jenkins
P. 22

B-190020

August 16, 1978

The Honorable Jack Brooks
Chairman, Committee on Government
Operations
House of Representatives

Dear Mr. Chairman:

Enclosed is a copy of our decision in General Electrodynamics Corporation, B-190020, of today in which we recommend corrective action be taken to determine if equipment offered by the General Electrodynamics Corporation meets the Air Force's requirements for use in its Boundary Alarm Assessment Program. This procurement was conducted by the Department of Energy (DOE) for the Air Force under the Economy Act, 31 U.S.C. § 686(a) (1970).

The DOE has been advised of its obligations under section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1970).

Sincerely yours,

R. F. Kellin

Deputy Comptroller General
of the United States

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B. J. J. J.
P. 2

B-190020

August 16, 1970

The Honorable James R. Schlesinger
The Secretary
Department of Energy

Dear Mr. Secretary:

Enclosed is a copy of our decision in General Electrodynamics Corporation, B-190020, of today in which we recommend corrective action be taken to determine if equipment offered by the General Electrodynamics Corporation meets the Air Force's requirements for use in its Boundary Alarm Assessment Program. This procurement was conducted by the Department of Energy (DOE) for the Air Force under the Economy Act, 31 U.S.C. § 686(a) (1970).

Copies of this decision have been transmitted by letters of today to the congressional committees named in section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1970), which requires your agency to submit to the named committees within prescribed times written statements of the action taken on the recommendation.

We would appreciate advice of the action taken on the recommendation. Also, please furnish us copies of your written statements to the congressional committees.

Sincerely yours,

R. W. K. M.
Deputy Comptroller General
of the United States

Enclosure



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

P. J. J. J.
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B-190020

August 16, 1978

The Honorable Jim Mattox
House of Representatives

Dear Mr. Mattox:

We refer to your letter dated April 14, 1978, on behalf of your constituent, General Electrodynamics Corporation, regarding the reconsideration of that firm's earlier protest. Please find enclosed a copy of our decision of today in which we recommend corrective action be taken.

Sincerely yours,

P. J. J. J.
Deputy Comptroller General
of the United States

Enclosure